

1 E. MARTIN ESTRADA
2 United States Attorney
3 MACK E. JENKINS
4 Assistant United States Attorney
5 Chief, Criminal Division
KRISTIN N. SPENCER (Cal Bar. No. 294692)
6 MELISSA S. RABBANI (Cal. Bar No. 283993)
7 Assistant United States Attorneys
8 Santa Ana Branch Office
9 8000 United States Courthouse
411 West Fourth Street
Santa Ana, California 92701
Telephone: (714) 338-3500
Facsimile: (714) 338-3708
E-mail: kristin.spencer@usdoj.gov
melissa.rabbani@usdoj.gov

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10 Attorneys for Plaintiff
UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 JAMAL NATHAN DAWOOD,
aka "Jimmy Dawood,"
18 Defendant.

No. SA CR 23-38-JVS

GOVERNMENT'S OPPOSITION TO MOTION
TO EXCLUDE DEPOSITION TESTIMONY;
DECLARATION OF MELISSA S. RABBANI
AND EXHIBITS

Hearing Date: February 5, 2024
Hearing Time: 9:00 a.m.

21
22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California and Assistant United States Attorneys Kristin Spencer and
25 Melissa Rabbani, hereby submits its opposition to defendant's motion
26 to exclude the deposition testimony of "T.B.," or Thomas Battaglia,
27 the victim in this wire fraud and money laundering case.

The government's opposition is based upon the attached memorandum of points and authorities, the attached declaration of Melissa Rabbani and exhibits thereto (including the transcript of Mr. Battaglia's deposition), the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: January 16, 2024

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

MACK E. JENKINS
Assistant United States Attorney
Chief, Criminal Division

/s/ Melissa S. Rabbani

KRISTIN N. SPENCER
MELISSA S. RABBANI
Assistant United States Attorneys

Attorneys for Plaintiff
UNITED STATES OF AMERICA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Jamal Nathan Dawood ("defendant") is charged with six counts of wire fraud, nine counts of money laundering, and one count of aggravated identity theft, all based on defendant's long-running scheme to defraud Thomas Battaglia of his inheritance.

In July 2023, Mr. Battaglia was hospitalized after suffering a stroke and heart attack. In August 2023, based on serious concerns regarding Mr. Battaglia's prognosis, the government applied ex parte for an order allowing it to conduct a deposition of Mr. Battaglia pursuant to Federal Rule of Criminal Procedure 15. The Court granted the government's application on August 31, 2023, and ordered that in light of Mr. Battaglia's health condition, the deposition should last no longer than three hours in total, excluding breaks. Dkts. 20-24.

The parties initially scheduled the deposition for September 29, 2023, before being forced to reschedule it after Mr. Battaglia was admitted to the ICU. See Rabbani Decl. ¶¶ 2-3. The deposition ultimately took place on October 17, 2023, in Mr. Battaglia's hospital room in Orange, California. Id. ¶ 4. The government and the defense each had the opportunity to question Mr. Battaglia for 90 minutes. The government's examination of Mr. Battaglia focused on Mr. Battaglia's relationship with defendant, including what he did and did not authorize defendant to do with respect to his inheritance, as well as the sixteen transactions that are the basis of the sixteen counts in the indictment.

Defense counsel began the deposition by announcing that there was "no way" he could successfully cross-examine Mr. Battaglia within 90 minutes and that, based on "the voluminous amount of material in

1 this case," defendant's cross-examination would "take much longer
2 than an hour and a half." Defense counsel then spent his 90 minutes
3 repeatedly challenging Mr. Battaglia's memory and truthfulness, while
4 questioning Mr. Battaglia at length regarding his professional
5 background; whether Mr. Battaglia was, in fact, the beneficiary of
6 his brother's trust; and the disposition of two properties that were
7 not the basis of any charges in the indictment.

8 Sadly, Mr. Battaglia died on November 3, 2023.

9 The government intends to introduce Mr. Battaglia's recorded
10 deposition testimony at trial. Defendant now moves to exclude that
11 testimony altogether, arguing that he was "unable to engage in
12 constitutionally sufficient cross-examination." Mot. at 11. But the
13 Sixth Amendment does not guarantee unlimited cross-examination, and
14 this Court has wide discretion to impose "reasonable limits" on
15 cross-examination based on concerns about a witness's health and
16 safety. Defendant was given a meaningful opportunity to cross
17 examine Mr. Battaglia at length about his motivations and potential
18 bias, as well as about the transactions charged in the indictment and
19 Mr. Battaglia's statements on direct examination. The Constitution
20 requires no more. Defendant's motion should be denied.

21 **II. RELEVANT FACTS**

22 Defendant introduced himself to Mr. Battaglia in July 2019,
23 shortly after Mr. Battaglia's brother, Jack Battaglia, passed away
24 and left his considerable assets - including Jack's home in San
25 Clemente and two rental properties he owned in Hawaii, as well as
26 roughly two million dollars in cash - in a trust for Mr. Battaglia's
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1 benefit. Tr. 16:16-24; 13:1-14:19; 22:11-23:25.¹

2 At the time defendant introduced himself to Mr. Battaglia, Mr.
3 Battaglia himself was 77 years old and dealing with his own health
4 concerns. Tr. 16:16-17:7; 38:21-24. Defendant offered to take
5 charge of renovating and selling Jack Battaglia's home and to manage
6 the Hawaii properties and the cash for Mr. Battaglia's benefit. Tr.
7 17:10-22:1. In particular, defendant told Mr. Battaglia that he
8 would manage the renovations and sale of Jack's home and would take
9 care of mortgage payments, homeowner's association fees, taxes, and
10 any other costs associated with the property. Tr. 18:3-21.
11 Defendant also told Mr. Battaglia that he would "temporarily"
12 transfer ownership of the two Hawaii properties to some other entity,
13 to "put [Mr. Battaglia] in the best position regarding the
14 disposition of those properties going forward." Tr. 21:2-22:1. Mr.
15 Battaglia understood that the Hawaii properties would be returned to
16 him after approximately 30 days. Id. And with respect to the cash
17 in the retirement account, defendant advised Mr. Battaglia that the
18 money should be placed into a "special holding account to be held in
19 trust for [Mr. Battaglia]"; Mr. Battaglia understood that "at some
20 future date all of this would [] come back" to him. Tr. 25:24-26.

21 Defendant represented himself as an expert in estate management
22 with extensive assets of his own. At some point in their
23 relationship, defendant told Mr. Battaglia that he had "helped a
24 hundred people with their estates." Tr. 33:11-23. Defendant
25 purported to show Mr. Battaglia an account summary on his phone
26

27 ¹ Citations to "Tr." refer to the transcript of Mr. Battaglia's
28 deposition, attached as Exhibit A to the declaration of Melissa
Rabbani.

1 screen stating that defendant had \$548 million in personal assets.
2 Tr. 33:24-34:4. Defendant also showed Mr. Battaglia a picture of
3 seven luxury cars from his "stable of vehicles"; Mr. Battaglia
4 remembered defendant always driving up in a "Rolls Royce or a
5 Bentley, Mercedes, or a Land Rover." Tr. 33:24-34:4. Defendant also
6 told Mr. Battaglia that he was a "medical doctor," an attorney, and a
7 "financial business consultant." Tr. 45:20-46:3.²

8 Shortly after meeting Mr. Battaglia, defendant went with Mr.
9 Battaglia to a Bank of America branch in San Clemente to open a bank
10 account for the trust. Tr. 26:8-27:20. Mr. Battaglia understood
11 that the money in the account was "specifically for [him] and no one
12 else"; defendant told Mr. Battaglia that defendant himself couldn't
13 "touch a penny of it." Tr. 27:15-20; 26:16-22. Defendant was given
14 login information to access the trust account online. Tr. 27:21-
15 28:4. Mr. Battaglia never learned to do so, and never accessed the
16 account online himself; he explained that he was "not that computer
17 savvy." Tr. 27:21-25, 28:16-29:1. Mr. Battaglia also never received
18 paper statements in the mail for the account. Tr. 44:21-25.

19 Over the course of the next several months, defendant made at
20 least six wire transfers from the trust account - totaling over \$1.4
21 million - into accounts that defendant himself controlled, before
22 spending that money on his own business ventures and luxury
23 purchases. See Dkt. 1. Defendant also used Mr. Battaglia's online
24 login to set up a recurring payment from the trust account to an LLC
25 defendant himself controlled. See id. Mr. Battaglia did not
26 discover until 2020 that the trust account had been drained; when he
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28 ² Public records searches show that no one by defendant's name
has ever been licensed to practice law or medicine in California.

1 confronted defendant, defendant told him that the money had been
2 transferred into "holding companies" to protect Mr. Battaglia and
3 would be returned to him in "probably 30 to 60 days maximum." Tr.
4 43:14-44:5. But defendant never returned any of that money to Mr.
5 Battaglia. Tr. 44:6-7. In addition, defendant had transferred
6 ownership of Jack's home and the two Hawaii properties to his own
7 entities, without ever transferring those properties back to Mr.
8 Battaglia. In fact, defendant sold Jack's home in 2020 - and Mr.
9 Battaglia never received any of the proceeds. See Tr. 39:13-40:10.

10 A federal grand jury indicted defendant in April 2023, charging
11 him with six counts of wire fraud, nine counts of money laundering,
12 and one count of aggravated identity theft, all based on the wire
13 transfers and recurring payments defendant made from the trust
14 account and defendant's subsequent expenditures of that money, which
15 included purchases at a luxury tobacco store, payments made in
16 connection with investments in real estate properties in Brea,
17 Fontana, and La Crescenta, payments to defendant's wife, and payment
18 of defendant's personal credit card bills. Defendant's conduct with
19 respect to Jack Battaglia's home and the two Hawaii properties
20 remains uncharged.

21 At his deposition, Mr. Battaglia testified that defendant never
22 told him that he was taking money from the trust account to invest in
23 other projects. Tr. 30:14-17; 130:13-16. Mr. Battaglia also
24 testified that he never told defendant that he wanted to invest any
25 of that money. Tr. 30:18-22. Mr. Battaglia explained that on
26 numerous occasions - "maybe 12, 13" times - defendant told Mr.
27 Battaglia to sign documents, while "obliterat[ing]" the contents of
28 the documents and explaining that the signatures were needed "to

1 protect" Mr. Battaglia and save his funds. Tr. 30:23-31:21; 130:21-
2 131:9.

3 Mr. Battaglia also testified that he had never agreed to any of
4 the expenditures charged in the nine money laundering counts. In
5 particular, Mr. Battaglia never agreed to invest in the purchase of
6 any real estate in Brea, Fontana, or La Crescenta - or any other
7 properties. Tr. 36:25-37:25. Mr. Battaglia was not familiar with
8 Rodeo Smoke Shop - the tobacco store where defendant spent \$100,000
9 from the trust account - and had never agreed that money from the
10 trust account could be transferred to defendant's wife or used to pay
11 defendant's personal credit card bills. Tr. 36:13-24; 38:3-15.

12 On cross examination, defense counsel began by asking Mr.
13 Battaglia extensive questions about his health, his education and
14 professional background, his relationship with Jack Battaglia, and
15 his initial meetings with defendant. See Tr. 50-70. Defense counsel
16 continued to ask questions about the nature of Mr. Battaglia's
17 relationship with defendant and his understanding as to the scope of
18 their agreement, including as to the repairs that were done to Jack
19 Battaglia's home and who would fund those repairs. Tr. 70-76.
20 Defense counsel then spent a great deal of time asking about the
21 Hawaii properties, challenging defendant's testimony that he had
22 never signed any documents with respect to the Hawaii property by
23 showing defendant written documents documenting the (below market)
24 sale of the Hawaii properties to defendant's entities, signed by Mr.
25 Battaglia. Tr. 76-94. Defense counsel also challenged defendant's
26 testimony that he had not been paid for sale of the Hawaii properties
27 by showing defendant records of a wire transfer sent to the trust for
28 approximately \$180,000. Tr. 95-100; 126-128. Toward the end of his

1 cross-examination, defense counsel asked a number of questions about
2 modifications to Jack Battaglia's trust, suggesting that at one point
3 Jack Battaglia had revised his trust to leave his home to a third
4 party rather than to Mr. Battaglia and accusing Mr. Battaglia of
5 misrepresenting those facts. Tr. 100-126; see also Tr. 100:22-101:6
6 (after Mr. Battaglia stated that his brother had "agreed to virtually
7 give everything" to him, defense counsel responded, "Mr. Battaglia,
8 you know that's not true").

9 Throughout his cross-examination, defense counsel repeatedly
10 challenged Mr. Battaglia's memory and truthfulness. See, e.g., Tr.
11 115:13-115:24 (asking whether it was "difficult" for Mr. Battaglia to
12 remember what happened in 2019 and whether the time of his brother's
13 death was a "confusing period"); 117:12-13 ("And you also are
14 confused about the Hawaii property, aren't you?"); 121:22-122:10
15 (challenging Mr. Battaglia's statement that he had no recollection of
16 statements purportedly made at a civil deposition "only twelve days
17 ago"); 128:21-22 ("In other words, all of these events are very
18 blurry to you. Is that your testimony?"); 129:7-8 ("You're having
19 trouble remembering what happened in 2018 and 2019, aren't you?");
20 129:15-17 ("But as far as what document you signed and business
21 relationships you had, it's all kind of blurry, isn't it?").

22 **III. LEGAL STANDARD**

23 The Sixth Amendment to the Constitution gives a criminal
24 defendant the right to be "confronted with the witnesses against
25 him," and the Supreme Court has explained that the "main and
26 essential purpose" of confrontation is "to secure for the opponent
27 the opportunity of cross-examination." Davis v. Alaska, 415 U.S.
28 308, 315-16 (1974) (internal quotation omitted). But that right is

1 not unlimited. "Generally speaking, the Confrontation Clause
2 guarantees an opportunity for effective cross-examination, not cross-
3 examination that is effective in whatever way, and to whatever
4 extent, the defense might wish." Delaware v. Fensterer, 474 U.S. 15,
5 20 (1985) (per curiam) (emphasis in original). In fact, trial judges
6 "retain wide latitude" under the Sixth Amendment to "impose
7 reasonable limits on [] cross-examination," based on concerns about,
8 among other things, "harassment, prejudice, confusion of the issues,
9 the witness' safety, or interrogation that is repetitive or only
10 marginally relevant." Delaware v. Van Arsdall, 475 U.S. 673, 679
11 (1986).

12 **IV. ARGUMENT**

13 The question posed by this case is simple: did defendant have
14 Mr. Battaglia's authorization to transfer money from the trust
15 account into defendant's own accounts, keep it, and spend it for his
16 own purposes, or did defendant take that money from Mr. Battaglia
17 through fraudulent promises, misstatements, and omissions?

18 On direct examination, Mr. Battaglia testified that he never
19 authorized defendant to take money from the trust account for his own
20 purposes or to invest in any separate ventures. Instead, Mr.
21 Battaglia understood that the money would be held for his - Mr.
22 Battaglia's - benefit, and not defendant's. Mr. Battaglia also
23 explained that defendant repeatedly - on roughly 12 or 13 occasions -
24 had Mr. Battaglia sign various legal documents, while concealing the
25 contents of those documents and promising Mr. Battaglia that the
26 documents were for Mr. Battaglia's own protection. Mr. Battaglia
27 also confirmed that after the trust account had been drained, he
28 never got "a penny" of the money back from defendant.

1 The Sixth Amendment guaranteed defendant an “opportunity” to
2 cross-examine Mr. Battaglia on these statements and to explore Mr.
3 Battaglia’s potential motivations, biases, veracity, and
4 recollection. But this Court had the discretion to impose reasonable
5 limits on that opportunity in order to protect Mr. Battaglia’s health
6 and safety.

7 At the time of his deposition, Mr. Battaglia clearly was
8 seriously ill and facing the end of his life. He had been
9 hospitalized for over two months following a stroke and heart attack;
10 as he himself testified, he was unable to stand or walk, and had to
11 testify from a hospital bed. See Tr. 51:2-8. Mr. Battaglia received
12 oxygen support throughout the deposition and appeared to be fatigued
13 after several hours of testimony. See Rabbani Decl. Ex. B. In light
14 of Mr. Battaglia’s serious health concerns, the limited scope of the
15 charges in this case, and the fact that the government itself was
16 restricted to 90 minutes of direct examination, the Court’s 90-minute
17 limitation on cross-examination was more than reasonable.

18 Courts have repeatedly upheld similar limits on cross-
19 examination. As the Ninth Circuit has explained, “[g]enerally
20 speaking, a court violates the Confrontation Clause only when it
21 prevents a defendant from examining a particular and relevant topic,
22 such as bias.” Fenenbock v. Director of Corrections for California,
23 692 F.3d 910, 919 (9th Cir. 2012). “[A]s long as the jury receives
24 sufficient information to appraise the biases and motivations of the
25 witness,” “[n]o Confrontation Clause violation occurs.” Id. at 919-
26 20 (quoting Hayes v. Ayers, 632 F.3d 500, 518 (9th Cir. 2011)).

27 In Fenenbock, 692 F.3d at 915, for example, the Ninth Circuit
28 held that the district court did not violate the Sixth Amendment by

1 imposing a time limitation on cross-examination of a key witness: a
2 minor who was "showing signs of fatigue" after several hours of
3 direct and cross examination. In United States v. Spangler, 638 F.
4 App'x 611, 613 (9th Cir. 2016), the Ninth Circuit held that the
5 district court's time limit on defense counsel's cross examination
6 did not violate the Sixth Amendment where defense counsel had "fair
7 warning" that his time would be limited and "was able to question
8 [the witness] about matters of bias."

9 Here, the deposition transcript makes clear that defense counsel
10 not only had the opportunity to explore Mr. Battaglia's motivations,
11 biases, veracity, and recollection, but took full advantage of that
12 opportunity over the course of his 90 minutes, repeatedly challenging
13 Mr. Battaglia's versions of events and questioning his memory. The
14 jury in this case will have more than sufficient information to
15 "appraise the biases and motivations" of Mr. Battaglia. The Sixth
16 Amendment requires no more.

17 **V. CONCLUSION**

18 Defendant was given ample opportunity to cross-examine Mr.
19 Battaglia, and the time limit imposed on his cross-examination was
20 clearly reasonable in light of Mr. Battaglia's health and prognosis.
21 That the defense would have preferred to spend two or more days
22 aggressively cross-examining the victim in this case is not grounds
23 for excluding Mr. Battaglia's deposition testimony altogether.
24 Defendant's motion should be denied.

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